



House Law & Justice Committee

April 25, 2018

RE: HB 5659, SB 873, 874, 880

Position: Oppose as Introduced

The ACLU of Michigan supports preventing child abuse and sexual abuse. We too agree that recent events shed light on the systemic failure of many individuals in protecting against this abuse and that there are several areas of improvement that must be addressed. Accountability is critical and it is imperative that we make access to the courts easy, safe, and secure for all victims of sexual abuse. The ACLU of Michigan recognizes and appreciates the extreme emotional pain any person goes through as the result of sexual abuse, and we wish to highlight some concerns for this legislature to consider in its attempts to address this complex issue. Accordingly, we oppose these bills as written and offer several recommendations.

We support training for mandated reporters; however, there are certain individuals who are inappropriately captured by the other bills that we recommend removing. Teens often volunteer as K-12 interscholastic coaches for younger children, and as drafted HB 5659 would require them to be mandated reporters subject to major penalties. Even with training, many minors are not developed or mature enough to recognize the signs of abuse or would be able to understand the scope of their responsibilities under this law nor should they be tasked with such a responsibility or penalized. Additionally, volunteers generally should not be subjected to the same requirements as paid employees and there are varying degrees of volunteers that should be distinguished. A person who gives a few hours of their time a couple times a week should not have the same legal requirements as a full time volunteer.

Finally, enhancing criminal penalties against mandatory reporters for the failure to report is cause for concern. For states that have criminal penalties for mandated reporters' failure to report, most are 93 day to 6 month misdemeanors.¹ The most severe penalties carry 5 year maximum sentences and are often for subsequent offenses.² The senate bills proposed will go well beyond even the harshest of penalties in the country.

Additionally, severe penalties for failure to report may be counterintuitive. Richard Wexler, Executive Director of the National Coalition for Child Protection Reform, noted that even trained

¹ "State Statute Search: Penalties for Failure to Report and False Reporting of Child Abuse and Neglect," Child Welfare Information Gateway, U.S. Department of Health & Human Services, <https://www.childwelfare.gov/topics/systemwide/laws-policies/state/?CWIGFunctionsaction=statestatutes:main&CWIGFunctionspk=1>.

² *Id.* Connecticut (3 years \$3,500 for second offense) and Florida (5 years \$5,000), Maryland (5 years \$10,000 misdemeanor).

mandatory reporters often call in “patently absurd” cases for fear of being punished for failing to report. We recognize that while there are certainly situations where reporting makes sense and is necessary, there may be certain circumstances that are not best handled by law enforcement or state intervention, but rather within a family. Examinations to check for sexual abuse are intrusive, and even tactics, such as repeated questioning, can sometimes produce false allegations from young children who haven’t been abused. These investigations have a long term and severe impact on families. The ensuing investigation can then traumatize children, or worse, place them needlessly in foster care. We do not want to silence survivors and victims of sexual abuse nor do we want to empower abusers. We also do not want to create an environment that forces people to choose between facing potential criminal penalties over avoidable or unnecessary long term collateral consequences on a family.

Accordingly, we make the following recommendations:

- Providing an exception to mandatory reporting requirement for minors (HB 5659)
- Eliminating volunteers as mandated reporters or at least only mandating reporter to full time (40 hours/week) volunteers. (HB 5659, SB 873, 874)
- If a penalty is necessary, it should be lowered and be a graduated penalty that is consistent with practices across the country (SB 874, SB 880) beginning with a first offense as a misdemeanor.

Ultimately we desire to see policies that create positive change and consider all of the potential ramifications and hope to be further included in the conversation to address these issues.

Respectfully submitted,

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